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FISCAL IMPACT REPORT

SPONSOR Tsosie DATE TYPED 03/18/05 HB _____

SHORT TITLE Native American Resident Student Definition SB 482

ANALYST Williams

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Indeterminate, but could be large and escalates over time; see text	Recurring	General Fund - Higher education funding formula
			Indeterminate, but could be large and escalates over time; see text	Recurring	General Fund - Cost of tuition waiver (difference between resident and non-resident tuition for each student)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Commission on Higher Education (CHE)
 Department of Indian Affairs

SUMMARY

Synopsis of Bill

Senate Bill 482 expands the definition of “resident student” for the purposes of tuition payment and budget and revenue calculations at the state’s post-secondary educational institutions to include members of Indian nations, tribes and pueblos located wholly or partially in New Mexico regardless of actual residence prior to acceptance by the institution. The status would apply to both undergraduate and graduate students attending only those institutions designated in Article 12, Section 11, specifically University of New Mexico, New Mexico State University, New Mexico Highlands University, Western New Mexico University, Eastern New Mexico Univer-

sity, the New Mexico Institute of Mining and Technology, New Mexico Military Institute, New Mexico School for the Blind and Visually Impaired, New Mexico School for the Deaf and Northern New Mexico State School.

Significant Issues

The Department of Indian Affairs notes “SB 482 is an executive agency bill. The proposed legislation was formally endorsed by the Commission on Indian Affairs.”

Further, the Department of Indian Affairs notes the legislation “would eliminate the instances where tribal members attend out-of-state universities for their undergraduate studies, and return home to New Mexico to attend law school, medical school or other post-graduate studies and are then subject to non-resident tuition.” The extent to which these individuals might be offered a graduate assistantship which effectively provides a non-resident tuition waiver is not insignificant.

Note existing statute already authorizes tuition to be charged at resident rates at New Mexico Highlands University for any Native American who is a citizen of the United States.

Eligible Groups. Due to the existence of the Navajo Nation non-resident tuition waiver program, the bill would effectively apply to members of all New Mexico tribes, regardless of residence, at the time of admission. The Department of Indian Affairs notes “most, if not all, of these individuals and their children maintain their ties to their traditional homeland and culture and intend to return directly to their own communities or to neighboring cities/towns”; thus, the potential eligible population under the provisions of the bill as currently written is quite large.

FISCAL IMPLICATIONS

The bill does not contain an appropriation; however, the fiscal impact would have two components. The first would likely be a non-recurring surge of cohorts due to pent-up demand for access to higher education opportunities. The second would be a recurring, annual impact of individuals moving into the New Mexico post-secondary education system. For the second component, the fiscal impact would occur in two key areas: 1) general fund cost of each student per the higher education funding formula and 2) general fund cost of each student receiving a non-resident tuition waiver. Due to the size of potential eligibles, the general fund cost is indeterminate, but potentially large.

Note in the case of a non-resident tuition waiver, the general fund bears the burden of the difference between resident and non-resident tuition rates for every student (as is the case for all current tuition waiver programs). This fiscal cost occurs because of the interpretation of the CHE for similar statutory provisions offering non-resident tuition waivers contained within 21-1-3 NMSA 1978, such as Texas 135-mile, athletics and graduate assistants. All students attending a post-secondary institution are also captured under the student credit hours reported for the higher education funding formula.

In an updated analysis, CHE also concludes the total cost of the proposed bill is indeterminate. “Using current non-resident Native American enrollment at each state institution ...” (excluding Native American non-resident students already paying in-state tuition due to existing tuition agreements)... “and the difference between resident and non-resident tuition,” the first compo-

ment of general fund cost was estimated at \$2.2 million. Note this methodology reflects the current gap between resident and non-resident tuition rates. However, the bill may “result in the attraction of additional Indian students to the New Mexico higher education institutions.”... who “will also generate additional appropriation requirements...”.

According to LFC files, the Navajo Nation non-resident tuition waiver program is currently offered by the Commission on Higher Education in that “all out-of-state members of the Navajo tribe who reside on the Navajo reservation, as certified by the Navajo Department of Higher Education, is assessed in-state tuition rates.” Further, a New Mexico/Arizona reciprocity agreement enables students from each state to enroll at designated institutions of higher education in the other state at in-state tuition rates.

According to data from LFC files, the cost of the existing Navajo Nation tuition waiver is \$1.6 million in FY06, based on 2002-2004 enrollment data and 2004-2005 tuition rates. Note this cost solely represents the difference between resident and non-resident tuition rates. Of the total amount of the cost of the Navajo Nation tuition waiver program, approximately \$1.1 million is accounted for by four-year post-secondary institutions, while just under \$600 thousand was utilized by students at community colleges. About 65 percent of the total cost of the program was attributable to undergraduates. Students at the University of New Mexico represented approximately 52 percent of program costs.

TECHNICAL ISSUES

In its bill analysis, CHE takes the position that if this bill is enacted, CHE regulations would be revised to extend residency status for tuition purposes for the qualifying group at all public, post-secondary institutions in the state.

Due to land ownership status, the provisions of this bill may be applicable to the Ute Mountain Ute tribe in addition to the state’s 22 tribes and pueblos.

OTHER SUBSTANTIVE ISSUES

The legislation would make higher education more affordable and accessible for Native American students as well as offer associated economic opportunities.

According to the CHE bill analysis “all other non-resident Indian students must meet the criteria established in CHE regulations to establish residency in New Mexico. These criteria are detailed in 5.7.18.11 of the New Mexico Administrative Code and include:

1. Physical resident in the state for twelve consecutive months prior to enrollment;
2. Financial independence from parents or guardians;
3. A written declaration of intent to relinquish residency in any other state and to establish it in New Mexico; and
4. Fulfillment of at least two “overt act” listed in the regulation. These include proof of payment of state income taxes, registration of a motor vehicle in the state and several others.”

ALTERNATIVES

It should be noted this legislation extends a higher education entitlement program; thus, potential

cost would be driven by the number of qualified applicants each year. The legislature might consider explicit language to authorize a specific amount of funding for qualified applicants as a mechanism to cap annual costs. Then, the cap could be evaluated on the basis of the demand and funding availability.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The Department of Indian Affairs notes the “opportunity to increase the number of well-trained professional tribal members who could help improve the social and economic conditions of their communities would be lost.” Further, the Department of Indian Affairs notes the need to stem the “brain drain” effect.

POSSIBLE QUESTIONS

1. Under the provision of the legislation, is it the Legislature’s intent to authorize a non-resident tuition waiver for the group identified in this bill, for which the general fund bears the cost of the difference between resident and non-resident tuition for each eligible student?
2. Is there the possibility of establishing a tuition reciprocity agreement approach to achieve the sponsor’s intent in which a cap on numbers of eligible students would be in place for students coming to New Mexico and a cap on numbers of reciprocal eligible students for New Mexico students to attend out-of-state institutions? (This is a more common approach to tuition waiver programs between states, and several existing New Mexico programs could serve as models.)

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